

DRRT

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DRRT CLAIMANTS

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects Both Debtors

* All papers shall be filed in Lead Case 19-30088-DM

BK Case No.: 19-30088-DM (Lead Case)
(Jointly Administered)

Chapter 11

**AMENDED MOTION FOR RELIEF FROM
ORDERS BY DEFAULT DISALLOWING
AND EXPUNGING PROOFS OF CLAIMS
PURSUANT TO REORGANIZED
DEBTORS' ELEVENTH AND
THIRTEENTH SECURITIES CLAIMS
OMNIBUS OBJECTIONS (CLAIMS
BARRED BY THE STATUTE OF REPOSE)**

Date: January 18, 2022
Time: 10:00 a.m.
Location: Telephonic / Videoconference
Judge: Honorable Dennis Montali¹

¹ Paragraph 10 of General Order 38 (Seventh Amended) provides that "[u]nless otherwise ordered by the presiding judge, all notices of any motion or application filed with the court and served on any party which sets a

1 DRRT as the duly appointed claims filing representative for individual claimants
2 Bayerninvest Kapitalverwaltungsgesellschaft MBH, Credit Suisse Funds AG, Deka Investment
3 GMBH, Giam Generali Insurance Asset Management, Helaba Invest Kapitalanlagegesellschaft
4 MBH, Internationale Kapitalanlagegesellschaft MBH, Internationale Kapitalanlagegesellschaft
5 MBH, Kaiser Permanente, Metzler Asset Management GMBH, Swiss Reinsurance Company
6 Ltd., UBS Fund Management (Switzerland) AG, UBS Fund Management Luxembourg S.A.,
7 Meag Munich Ergo Kapitalanlagegesellschaft MBH, (collectively, the “DRRT Claimants”)
8 hereby moves (the “Motion”) this Court for entry of an order vacating the *Order Disallowing*
9 *and Expunging Proofs of Claim Pursuant to Reorganized Debtors’ Eleventh Securities Claims*
10 *Omnibus Objection (Claims Barred by the Statute of Repose)* [Dkt. No. 11216] issued on
11 September 9, 2021 and the *Order Disallowing and Expunging Proofs of Claim Pursuant to*
12 *Reorganized Debtors’ Thirteenth Securities Claims Omnibus Objection (Claims Barred by the*
13 *Statute of Repose)* [Dkt. No. 11315] issued on September 24, 2021 as applied to those claims
14 filed by the DRRT Claimants in the above-captioned matter.

15 The Motion is based upon the Notice of Motion, the supporting Memorandum of Points
16 and Authorities set forth herein, the supporting Declaration of Jonathan Moussavou
17 (“Moussavou Decl.”), the supporting Request for Judicial Notice (“RJN”) and all exhibits
18 appended thereto, all other pleadings on file herein, and such other and further arguments and
19 authority as may be presented at the hearing on the Motion.

20 **I. RELEVANT PROCEDURAL BACKGROUND**

21 On January 25, 2021, this Court entered an *Order Approving Securities ADR and Related*
22 *Procedures for Resolving Subordinated Security Claims* (the “Securities Omnibus Objection
23 Procedures”). See Dkt. No. 11017. However, Exhibit A-3 of the Securities Omnibus Objection
24

25 hearing date for the motion or application must state that the hearing will not be conducted in the presiding judge’s
26 courtroom but instead will be conducted by telephone or video, and include the following language: ‘All interested
27 parties should consult the Bankruptcy Court’s website at www.canb.uscourts.gov for information about court
28 operations during the COVID-19 pandemic. The Bankruptcy Court’s website provides information regarding how
to arrange a telephonic or video appearance. If you have any questions regarding how to appear at a court hearing,
you may contact the Bankruptcy Court by calling 888-821-7606 or by using the Live Chat feature on the
Bankruptcy Court’s website.’” See [https://www.canb.uscourts.gov/sites/default/files/generalorders/Seventh](https://www.canb.uscourts.gov/sites/default/files/generalorders/SeventhAmendedGO38.pdf)
AmendedGO38.pdf.

1 Procedures did not address or otherwise abrogate the minimum deadline (at least 30 days) for
2 claimants to request a hearing pursuant to Federal Rule of Bankruptcy Procedure 3007(a)(1) and
3 Bankruptcy Local Rule 3007-1(c). Id.

4 On August 3, 2021, Debtor filed *Reorganized Debtors' Eleventh Securities Claims*
5 *Omnibus Objection (Claims Barred by the Statute of Repose)* (the "11th Omnibus Objection").
6 See Dkt. No. 11014.

7 Pursuant to the *Notice of Hearing on Reorganized Debtors' Eleventh Securities Claims*
8 *Omnibus Objection (Claims Barred by the Statute of Repose)*, also filed on August 3, 2021,
9 claimants were required to file opposition to the 11th Omnibus Objection by August 31, 2021 at
10 4:00 p.m. PST, and this notice advised that the Court would hold a hearing on September 14,
11 2021 at 10:00 a.m. PST only if "timely" opposition was filed. See Dkt. No. 11017.

12 On September 9, 2021, this Court entered an *Order Disallowing and Expunging Proofs*
13 *of Claim Pursuant to Reorganized Debtors' Eleventh Securities Claims Omnibus Objection*
14 *(Claims Barred by the Statute of Repose)* (the "Order re 11th Omnibus Objection"). See Dkt.
15 No. 11216. In relevant part for this Motion, the Order re 11th Omnibus Objection disallowed
16 certain claims filed by the DRRT Claimants. Id.

17 On August 18, 2021, Debtor filed *Reorganized Debtors' Thirteenth Securities Claims*
18 *Omnibus Objection (Claims Barred by the Statute of Repose)* (the "13th Omnibus Objection").
19 See Dkt. No. 11085.

20 Pursuant to the *Notice of Hearing on Reorganized Debtors' Thirteenth Securities Claims*
21 *Omnibus Objection (Claims Barred by the Statute of Repose)*, also filed on August 18, 2021,
22 claimants were required to file opposition to the 13th Omnibus Objection by September 15, 2021
23 at 4:00 p.m. PST, and the notice advised that the Court would hold a hearing on September 29,
24 2021 at 10:00 a.m. PST only if "timely" opposition was filed. See Dkt. No. 11088.

25 On September 24, 2021, this Court entered an *Order Disallowing and Expunging Proofs*
26 *of Claim Pursuant to Reorganized Debtors' Thirteenth Securities Claims Omnibus Objection*
27 *(Claims Barred by the Statute of Repose)* (the "Order re 13th Omnibus Objection"). See Dkt.
28 No. 11315. In relevant part for this Motion, the Order re 13th Omnibus Objection disallowed

certain claims filed by the DRRT Claimants. Id.

On August 28, 2021, Debtor filed *Reorganized Debtors' Fourteenth Securities Claims Omnibus Objection (Claims Barred by the Statute of Repose)* (the "14th Omnibus Objection"). See Dkt. No. 11339.

On October 27, 2021, the DRRT Claimants filed a *Motion for Leave to File Late and Opposition to Reorganized Debtors' Eleventh, Thirteenth, and Fourteenth Securities Claims Omnibus Objections (Claims Barred by the Statute of Repose)* (the "DRRT Opposition"). See Dkt. No. 11498. The DRRT Opposition, in relevant part, joined the opposition and response filed by the PGIM FI Claimants (Dkt. No. 11168) and the opposition filed by the State of Oregon Claimants (Dkt. No. 11170). Id.

The DRRT Opposition also requested (for the first time) that this Court vacate those portions of the Order re 11th Omnibus Objection and the Order re 13th Omnibus Objection that disallowed and expunged (by default) certain claims filed by the DRRT Claimants. Id.

In response to the DRRT Opposition, and acknowledging the faulty legal premises underpinning the 11th Omnibus Objection, 13th Omnibus Objection, and 14th Omnibus Objection, Debtor filed *Reorganized Debtors' Report on Responses to Fourteenth Securities Claims Omnibus Objection (Claims Barred by the Statute of Repose) and Request for Order by Default as to Unopposed Objections*, which in relevant part, accepted the opposition asserted by the DRRT Claimants and withdraw Debtor's objection to certain claims (Claims Nos. 98869, 99288, 99393, 99395, 99630, 99647, 99739, 99997, 100072, 100109, 100153, 100154, 100178, 100199, 100210, 100430, 100547, 100589, 100633, 100940, 101098, 101134, 101167, 101174, 101410) as previously requested in the 14th Omnibus Objection. See Dkt. No. 11516.

The DRRT Claimants hereby seek to vacate those portions of the Order re 11th Omnibus Objection and the Order re 13th Omnibus Objection that disallowed and expunged (by default) certain claims filed by the DRRT Claimants in the Bankruptcy Case.

II. LEGAL ARGUMENT

Pursuant to Federal Rule of Civil Procedure 60(b)(1), "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding

1 for the following reasons ... mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ.
2 P. 60(b)(1). Further, Federal Rule of Civil Procedure 60(b)(6) also provides the Court with
3 authority to relieve a party from a final judgment, order, or proceeding for “any other reason that
4 justifies relief.” Fed. R. Civ. P. 60(b)(6).

5 For purposes of Federal Rule of Civil Procedure 60(b)(1), the test for determining
6 “excusable neglect” is well established: it is “at bottom, an equitable one, taking account of all
7 relevant circumstances surrounding the party’s omission.” Pioneer Investment Servs. Co. v.
8 Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993). Such an analysis requires the
9 weighing or balancing of relevant factors, including the following four: (1) the danger of
10 prejudice to the debtor; (2) the length of the delay and its potential impact on judicial
11 proceedings; (3) the reason for the delay, including whether it was within the reasonable control
12 of the movant; and (4) whether the movant acted in good faith. Id. at 395; Pincay v. Andrews,
13 389 F.3d 853, 855 (9th Cir. 2004).

14 As previously recognized by this Court, “[i]n Pincay an *en banc* panel of the Ninth
15 Circuit rejected the concept that certain types of culpable conduct (such as an attorney relying on
16 a paralegal to interpret and abide by a court rule instead of reading and complying with the rule
17 himself) are ‘per se’ not excusable neglect. In so holding, the panel noted that the ‘real question’
18 is ‘whether there [is] enough in the context of [the] case to bring a determination of excusable
19 neglect within the [trial] court’s discretion.’” In re Pac. Gas & Elec. Co., 331 B.R. 915, 918
20 (Bankr. N.D. Cal. 2005) *citing* (Pincay, 389 F.3d at 859)).

21 First, the danger of prejudice to Debtor appears neutral. Although Plaintiff is “entitled to
22 finality” and to be able to rely on the fact that the DRRT Claimants did not file timely opposition
23 to Objection (see In re Pac. Gas & Elec. Co., 331 B.R. at 918), Debtor has been unable to
24 substantiate the merits of the asserted objections regarding the three-year statute of repose.

25 Given that the Court did not even hold a hearing to resolve the merits of the legal
26 arguments asserted in the 11th Omnibus Objection or the 13th Omnibus Objection, but rather,
27 granted a portion of those objections by default, there does not appear to be any prejudice, as
28 Debtor has not taken any action (or incurred any additional fees) other than seeking entry of

orders by default. See Dkt. Nos. 11216, 11315.

Further, as set forth below, there are questions whether there is any prejudice to Debtor, because the *Notice of Hearing* does not appear to comply with the applicable 30 day notice requirements of the federal and local rules (see footnote 2), and because Debtor accepted the DRRT Opposition (in its entirety) with respect to the 14th Omnibus Objection, which set forth the exact same legal arguments that would have been raised in opposition to the 11th Omnibus Objection and the 13th Omnibus Objection (see Dkt. Nos. 11498, 11516).

As such, under these circumstances, it is highly questionable whether Debtor should be entitled to reap the benefits of a non-meritorious legal objection (by default) in the 11th Omnibus Objection and the 13th Omnibus Objection, but when timely opposition is asserted, Debtor simply withdraws the exact same objections to DRRT Claims in the 14th Omnibus Objection.

Second, the length of the delay, may weigh slightly in favor of the DRRT Claimants, as the original version of this Motion was filed less than two (2) months after entry of both orders. See Dkt. No. 11498. Further, as set forth in detail in the declaration of Jonathan Moussavou, the DRRT Claimants became aware of the 11th Omnibus Objection and the 13th Omnibus Objection after entry of the respective Order re 11th Omnibus Objection and Order re 13th Omnibus Objection, and thereafter, promptly filed this Motion to vacate entry of those orders as applied to claims asserted on behalf of the DRRT Claimants. See In re Pac. Gas & Elec. Co., 331 B.R. at 918; see also Moussavou Decl. ¶¶ 10-11.

Third, the reason for the delay, tips in favor of the DRRT Claimants, because as a result of several unforeseen circumstances, attorneys for the DRRT Claimants did not receive actual notice of the 11th Omnibus Objection and the 13th Omnibus Objection until after the Court granted the requested relief by default. See Moussavou Decl. ¶¶ 3-11.

Specifically, the primary business of DRRT is to represent clients in class action litigation, and on average, DRRT only represents clients in pending bankruptcy cases once every two years. See Moussavou Decl. ¶ 9. Further, DRRT did not make an appearance in the Bankruptcy Case, but rather, only filed proof of claims on behalf of certain clients, and therefore did not receive *Notice of Electronic Filing* (NEF) from the CM/ECF system for any pleadings

1 filed in this matter. See Moussavou Decl. ¶ 10. Finally, as a result of the COVID-19 global
2 pandemic, staffing levels for the Claims Department were significantly reduced, and DRRT did
3 not open or process the 11th Omnibus Objection or the 13th Omnibus Objection, which were
4 sent *via* regular first class mail from the United States Postal Service (USPS), until after the
5 respective deadline to file opposition to the objections. See Moussavou Decl. ¶¶ 8, 10-11.

6 As such, the Law Firm department for DRRT did not have a meaningful opportunity to
7 respond to the 11th Omnibus Objection or the 13th Omnibus Objection until after the deadline,
8 and once the Law Firm had actual knowledge of these objections, DRRT undertook immediate
9 action to seek the relief requested in this Motion. See Moussavou Decl. ¶ 11.

10 Fourth, good faith, this factor also weighs in favor of the DRRT Claimants, as: (1) the
11 DRRT Claimants have meritorious opposition to the legal position asserted by Debtor in the 11th
12 Omnibus Objection and the 13th Omnibus Objection regarding the three-year statute of repose
13 (see Dkt. Nos. 11168, 11170, 11498); (2) Debtor has already accepted the legal position of the
14 DRRT Claimants and withdrew all objections to claims filed by the DRRT Claimants asserted
15 in the 14th Omnibus Objection (see Dkt. No. 11516), which ironically is the exact same
16 opposition to the 11th Omnibus Objection and 13th Omnibus Objection; (3) there are serious
17 questions whether the contents of the *Notice of Hearing* for the 11th Omnibus Objection and the
18 13th Omnibus Objection complied with Federal Rule of Bankruptcy Procedure 3007(a)(1) and
19 Bankruptcy Local Rule 3007-1(c);² and (4) the DRRT Claimants simply request that these

21 ² Federal Rule of Bankruptcy Procedure 3007(a)(1) provides that “[a]n objection to the allowance of a
22 claim and a notice of objection ... shall be filed and served at least 30 days before any scheduled hearing on the
23 objection or any deadline for the claimant to request a hearing.” Fed. R Bankr. Pro. 3007(a)(1) (emphasis added).
Here, in the *Notice of Hearing* for the 11th Omnibus Objection (Dkt. No. 11014) and the 13th Omnibus Objection
(Dkt. No. 11088), Debtor only provided the DRRT Claimants with 28 days to file timely opposition.

24 However, the asserted “hearing” for the 11th Omnibus Objection and the 13th Omnibus Objection were
25 merely illusory, as the Court was not actually going to hold a hearing on these objections unless a party timely filed
26 opposition (which was defined in the Notice of Hearing as only 28 days), and in fact, the Court did not hold an
27 actual hearing on the 11th Omnibus Objection or the 13th Omnibus Objection as set forth in the corresponding
Notice of Hearing. Rather, the Court entered the Order re 11th Omnibus Objection (on September 9, 2021) *prior to*
the asserted “hearing” on September 14, 2021, and the Court entered the Order re 13th Omnibus Objection (on
September 24, 2021) *prior to* the asserted “hearing” on September 29, 2021. See Dkt. Nos. 11216, 11315.

28 As such, since the asserted “hearing” was illusory, and the deadline for the DRRT Claimants to file
opposition to the 11th Omnibus Objection and the 13th Omnibus Objection was only 28 days, it does not appear that
Debtor provided sufficient and proper 30-day notice under Federal Rule of Bankruptcy Procedure 3007(a)(1) “for

1 objections are adjudicated consistent with applicable law (and not by default), as the underlying
2 factual allegations are not in dispute and the objections require a simple legal determination
3 regarding the applicability of the asserted three-year statute of repose.

4 Further, once the DRRT Claimants became aware of entry of the Order re 11th Omnibus
5 Objection and the Order re 13th Omnibus Objection, they promptly sought to vacate entry of
6 these orders pursuant to Federal Rule of Civil Procedure 60 and have not otherwise acted in bad
7 faith for purposes of delay. See Moussavou Decl. ¶¶ 10-11.

8 Balancing these factors, the DRRT Claimants have established that its neglect is
9 excusable under the standard set forth for Federal Rules of Civil Procedure 60(b)(1) and (b)(6),
10 and this Court should exercise its discretion to grant this Motion and vacate those portions of the
11 Order re 11th Omnibus Objection and the Order re 13th Omnibus Objection that disallowed and
12 expunged (by default) certain claims filed by the DRRT Claimants in the Bankruptcy Case.
13 See In re Pac. Gas & Elec. Co., 331 B.R. at 919 (“[b]alancing these factors is not a mathematical
14 test, and the court is not obligated to give equal weight to them. Rather, it is to balance the
15 factors together and to determine whether the neglect should be excused”).

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26 claimant to request a hearing.” This conclusion is also consistent with a fair reading of B.L.R. 3007-1(c), which
27 requires at least 30-days notice for a claimant to request a hearing when utilizing the notice and opportunity for
28 hearing procedure pursuant to B.L.R. 9014-1(b)(3)(A). Here, the actual “hearing” set forth in the *Notice of Hearing*
is more aptly construed as the tentative hearing date for purposes of B.L.R. 9014-1(b)(3)(B), which pursuant to
B.L.R. 9014-1(b)(3)(A), required Debtor to provide claimants at least 30 days to request a hearing consistent with
Federal Rule of Bankruptcy Procedure 3007(a)(1) and B.L.R. 3007-1(c).

1 **III. CONCLUSION**

2 Based on the foregoing, the DRRT Claimants respectfully request that the Court enter an
3 order granting the Motion in its entirety, vacating those portions of the Order re 11th Omnibus
4 Objection and the Order re 13th Omnibus Objection that disallowed and expunged (by default)
5 certain claims filed by the DRRT Claimants in the Bankruptcy Case, and for such other and
6 further relief that is just and appropriate under the circumstances.

7
8 Dated: December 21, 2021

DRRT

9 By: /s/ JARED LAY

10 Jared Lay, Esq.
11 Attorneys for Creditors
12 DRRT CLAIMANTS

13 Dated: December 21, 2021

MEYER LAW GROUP LLP

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